87-401

No.

Supreme Court, U.S.
FILED
JUL 28 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1987

ENNIS GRIMES,

Petitioner,

v.

OTIS R. BOWEN,
SECRETARY OF HUMAN SERVICES,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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36 pp

QUESTIONS PRESENTED

Did the Petitioner have his due process rights violated by the Administrative Law Judge in the Social Security hearing when the Administrator Law Judge applied vocational guidelines and found that the Petitioner was not disabled within the meaning of the Social Security Act when no vocation expert testified and the Petitioner was not given opportunity to rebut the guidelines and assumptions as applied to his case that were made through the vocational guidelines?

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OPINION BELOW

The opinion of the Court of Appeals denying em bach hearing (Appendix A, infra, pp. A1-A1) [omitted] is unreported. The opinion of the Eleventh Circuit (Appendix B, infra, pp. B1-B5) [omitted] is unreported. The opinion of the United States District Court for the Middle District of Georgia (Appendix C, infra, pp. C1-C2) [omitted] is unreported. The opinion of the Social Security Appeals Council (Appendix D, infra, pp. D1-D2) [omitted] is unreported. The opinion of the Administrative Law Judge (Appendix E, infra, pp. E1-E8) [omitted] is unreported.

JURISDICTION

The opinion of the United States Circuit of Appeals for the Eleventh Circuit was entered on April 7, 1986. The order of the United States Court of Appeals for the Eleventh Circuit denying an em bach hearing was entered on March 30, 1987. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES, RULES AND REGULATIONS INVOLVED

42 U.S.C. § 405(g) provides in pertinent part:

> Any individual, after any final decision of the Secretary made after a hearing to which he was a party . . . may obtain a review of such decision by a civil action commenced within sixty days . . . in the district court of the United States for the judicial district in which the plaintiff resides.

42 U.S.C. § 423(a) provides in pertinent part:

> (1) Every individual who—(A) is insured for disability benefits . . . has not attained retirement age . . . shall be entitled to a disability insurance benefit for each month beginning with the first month after his waiting period . . . or for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits.

42 U.S.C. § 423(d) provides in pertinent part:

> . . . "disability" means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

42 U.S.C. § 423(d)(2) provides in pertinent part:

> An individual . . . shall be determined to be under a disability only if his physical or mental impair-

ment or impairments are of such severity that he is not only unable to do his previous work but, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy.

The pertinent regulations of the Social Security Administration are reported in the attached Appendix at pp. E-2 to E-4 of the Decision of the Administrative Law Judge.

STATEMENT

The Petitioner, Ennis Grimes, filed an application for disability insurance benefits under Title II of the Social Security Act on May 4, 1982, alleging that he had become disabled as of April 23, 1982 due to degenerative disc disease of the lower back. This claim was disapproved by the Respondent. Mr. Grimes exhausted his administrative remedies in a timely fashion including a request for a hearing. The administrative hearing was before an Administrative Law Judge and a request for review of the hearing decision. This last appeal resulted in the actions of the Appeals Council of July 15, 1983, which included the final decision of the Secretary.

From the time the Petitioner completed his high school education, he has worked in the building industry either as a carpenter or building inspector. His last job before he applied for disability was with the Affiliated Building Services of Atlanta, Georgia, as a senior maintenanceman at Hartford International Airport. He was medically retired from that job on April 23, 1982.

On April 26, 1982, he was examined by Dr. J.H. Spivey, an orthopedist, who found some paraspinus muscle tightness in the back as well as decreased range of motion in form of flexion. He gave a diagnosis of probable chronic lombar strain and advised Mr. Grimes that a definitive diagnosis and treatment would require a mileogram, possible CT scan, and some EMG's. Mr.

Grimes told Dr. Spivey he would think about this and he would return to his treating physician, Dr. Jones.

Mr. Grimes was next seen by Dr. W.B. Wildstein in connection with a determination of eligibility for long-term disability benefits under an insurance policy taken in connection with his work with Affiliated Building Services of Atlanta, Georgia. Dr. Wildstein advised that clinically, Mr. Grimes had a lumbosacral ruptured disc and restricted Mr. Grimes to any prolonged sitting, standing or lifting above twenty-five (25) pounds. Dr. Wildstein advised that Mr. Grimes was a candidate for a long-term disability, which at the time of the hearing was being paid by the Connecticut General Insurance Company on a monthly basis.

In the interim, Dr. Spivey, made a referral to a neurosurgeon, Dr. Robert Sears of Macon, Georgia. Mr. Grimes was seen by Dr. Sears on June 1, 1982, at which time he found some decrease in the range of motion in his back and a virtual absence of the left knee jerk reflection, with a fairly clear cut S-1 dermatome on the left possible straight leg raises on the left at forty (40) degrees. Dr. Sears also stated that Mr. Grimes had quite a classical and straight forward lumbosacral ruptured disc on the left. In view of the chronicity of the clear cut clinical picture that a myelogram was indicated.

Because of significant limitations he was experiencing, Mr. Grimes applied for rehabilitative services from the State of Georgia, Department of Vocational Rehabilitation, who sent him to Dr. Richard Tyler, an orthopedic surgeon. Dr. Tyler's examination included observation of severe pain in the back with flexation and mobilization of the left hip and positive straight leg raising bilaterally causing pain in the left hip, which radiated down the left leg. Pain was present in the lower part of the back especially on the left, with palpation or per-

cussion. X-rays showed decrease in the disc space at L-5, S-1, and Dr. Tyler recommended, for diagnostic purposes, a myleogram.

During this time, his physician, Dr. Jones, observed on more than one occasion marked limitation of motion and significant muscle spasm in the back. On February 2, 1983, a lumbar spine CT scan was performed which showed considerable hypertrophic degenerative spurring with narrowing of the neural foramen bilaterally, slightly more marked on the left with moderate narrowing on the left at this level and Dr. Sears' physical examination revealed limited straight-leg raising as well as some wasting of the left calf muscle.

Mr. Grimes testified at his hearing that this condition severely limited his ability to walk, stand, bend or stoop or even sit down and enjoy his lunch during his break. The pain and numbness in his back, radiating into his legs necessitated that he spend about 75% of his time during the day lying down.

Based upon this medical, clinical and testimonial evidence of record, the Administrative Law Judge determined that Mr. Grimes retained the ability to perform a job which would require standing and/or walking two of eight hours each day with lifting of up to ten pounds; e.g., sedentary work. While Mr. Grimes was found unable to return to his past relevant work, he was determined that he was not disabled in light of his young age (46 years old) and high school education based on the Secretary's Medical-Vocational Guidelines.

EXISTENCE OF JURISDICTION BELOW

The judgment of the Eleventh Circuit and the Request for En Bach Hearing to the Eleventh Circuit is attached as Exhibit A. The jurisdiction of this Court was invoked under 28 U.S.C. § 1254(1).

ARGUMENT

The decision below should be reversed because the action of the Administrative Law Judge in deciding Mr. Grimes' case violated the Petitioner's due process rights in applying medical vocational guidelines as set forth in 20 C.F.R. part 404, subpart P, Appendix 2.

The Petitioner concedes that the Supreme Court in the case of *Heckler v. Campbell*, 461 U.S. 458, 103 Sup. Ct. 1952, 76 L.2d 66 (1983), upheld the use of medical-vocational guidelines to determine a claimant's rights to disability benefits. The Court also rules that the use of the guidelines does not conflict with the Social Security Act nor those guidelines arbitrary or capricious.

The Court noted that the Social Security Administration is required to make two determinations in any case where the medical-vocational guidelines are used. First, it must access each claimant's individual abilities. This inquiry involves a determination of historic facts. The regulations require the Social Security Administration to make those findings on the basis of evidence produced at the hearing. This affords a claimant ample opportunity to present evidence related to his abilities and to offer evidence that the guidelines do not apply to him.

Second, the Social Security Administration must determine the type and number of jobs that exist in the national economy with a claimant, who meet the criteria of the guidelines, can perform. This issue is not unique to each claimant, thus, it is the type of issue that may be resolved fairly through rule making. Since requiring the Social Security Administration to relegate the existence of jobs in the national economy, at each hearing would hinder the overburdened agency, the use of the guidelines would not arbitrary and capricious. *Heckler v. Campbell*, supra.

The guidelines provide that any finding of fact made pursuant to the guidelines can be rebutted by a claimant, see 20 C.F.R., part 404, subpart P, Appendix 2. Peti-

tioner contends that he was never given the opportunity to rebut any factors relied on by the Administrative Law Judge in using the medical-vocational guidelines. At Petitioner's Social Security hearing, the only evidence presented was Petitioner's testimony and medical records; it was not known to the Petitioner that these guidelines would be used until the Administrative Law Judge rendered his decision, thus depriving him of the opportunity to rebut the presumption or demonstrate that the guidelines do not adequately apply in his case.

Given the facts that the Petitioner never knew these vocational guidelines were being applied to his case, he was deprived of his right of confrontation, and his right of rebuttal.

This case is one that should be granted Certiorari in that the balance which must be struck between a claimant's due process rights and the use of these vocational guidelines has not been fully addressed by this Court. This question was specifically left unanswered in the *Heckler v. Campbell* decision.

The Petitioner's case provides an opportunity to squarely address this issue, given the facts that no vocational expert, that the guidelines were used in determining that he was not disabled and that Petitioner was not made aware of these guidelines and what their effect would be and never was given the opportunity to rebut them.

CONCLUSION

For the reasons aforementioned as respectfully submitted, that this Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 86-8340

ENNIS GRIMES,
Plaintiff-Appellant,

versus

OTIS R. BOWEN,
Secretary of Health and Human Services,
Defendant-Appellee.

Appeal from the United States District Court for the
Middle District of Georgia

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion February 23, 11 Cir., 1987, —— F.2d ——)
(March 30, 1987)

Before TJOFLAT, HATCHETT and CLARK, Circuit Judges

PER CURIAM

(✓) The Petition for Rehearing is DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court

be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the Suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ Judge Tjoflat
United States Circuit Judge

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 86-8340

ENNIS GRIMES,
Plaintiff-Appellant,

versus

OTIS R. BOWEN,
Secretary of Health and Human Services,
Defendant-Appellee.

Appeal from the United States District Court for the Middle District of Georgia

---

(February 23, 1987)

Before TJOFLAT, HATCHETT and CLARK, Circuit Judges.

PER CURIAM:

Ennis Grimes appeals from the district court's decision affirming the Secretary's denial of disability insurance benefits. We affirm.

The Administrative Law Judge (AJL), whose decision the Appeals Council declined to review, found that Grimes, who met the earnings requirement of the Social Security Act, was not engaged in substantial gainful activity, had a severe impairment, was unable to perform his past relevant work as a carpenter, and retained the residual functional capacity (RFC) for at least sedentary

work as defined in 20 C.F.R. § 404.1567 (1985). After considering Grimes' RFC, his age of forty-six years, education, and work experience, the ALJ concluded that Grimes was not disabled.

Grimes contends that the district court should have set aside the Secretary's final decision because that decision was based on the ALJ's personal observations of Grimes rather than the evidence persented at the hearing. The Secretary contends that his decision was correct because the ALJ's finding that Grimes can perform sedentary work is supported by substantial evidence.

If the ALJ's decision is supported by substantial evidence, we must affirm it. *Flynn v. Heckler*, 768 F.2d 1273, 1274 (11th Cir. 1985). Substantial evidence is relevant evidence that "a reasonable person would accept as adequate to support a conclusion." *Bloodsworth v. Heckler*, 703 F.2d 1233, 1239 (11th Cir. 1983) (citations omitted).

20 C.F.R. § 404.1567(a) (1985) defines sedentary work as follows:

> Sedentary work. Sedentary work involves lifting no more than 10 pounds at a time and occasionally lifting or carrying articles like docket files, ledgers, and small tools. Although a sedentary job is defined as one which involves sitting, a certain amount of walking and standing is often necessary in carrying out job duties. Jobs are sedentary if walking and standing are required occasionally and other sedentary criteria are met.

The record reveals that Grimes could lift up to 25 pounds; his heart condition would not prevent him from engaging in sedentary or light work on a regular sustained basis; he could sit reasonably well without a great deal of pain; he could extend his knees in the sitting position without difficulty and enjoyed a range of motion in the hips, knees, and ankles; and he could hold up both arms, make a tight

fist with both hands, walk, turn his head, see, hear, read, write, and count money. One doctor suggested that Grimes might solve his back pain problems by changing to a more sedentary type job, and Grimes' most recent medical checkup revealed that his back pain had lessened tremendously and that his condition had improved greatly. Because a reasonable person would accept the foregoing evidence as adequate to support a conclusion that Grimes can perform sedentary work, the Secretary's decision is supported by substantial evidence.

Grimes contends that the district court erred in affirming the Secretary's ruling because it was not based on a full and complete record. Specifically, he argues that additional testimony concerning an old wrist injury was given at the hearing but does not appear in the transcript. The Secretary asserts that Grimes' allegation of the "missing testimony" was never raised during the administrative proceedings, nor did Grimes make an effort to submit "additional evidence" to the district court. The Secretary adds that Grimes, who has at all times been represented by counsel, has not shown good cause for his failure to offer the additional evidence at the administrative level, so as to justify a remand. This additional evidence issue was not raised during the administrative proceedings or in the district court. Thus, we do not consider it. *See Wheeler v. Heckler*, 784 F.2d 1073, 1076-77 (11th Cir. 1986) (issues not raised at either the administrative proceedings or the district court will not be considered on appeal).

Grimes contends that the ALJ erred in not indicating explicitly the weight he accorded each item of evidence. An ALJ must indicate the weight accorded each item of evidence and the basis for his decision. *Cowart v. Schweiker*, 662 F.2d 731, 735 (11th Cir. 1981). After reviewing the opinion of each of Grimes' examining physicians, their supporting clinical findings, laboratory findings, and Grimes' subjective complaints of pain, the

ALJ concluded that the clinical findings did not support Grimes' allegations of severe disabling pain. He gave great weight to the clinical findings, laboratory findings, and the supporting medical opinions. He discounted, however, the opinion of the treating physician, Dr. J.R. Jones, that Grimes was totally disabled. In so doing, the ALJ implicitly explained that Dr. Jones' opinion was due little weight because neither Dr. Jones' clinical findings nor the record evidence supported Dr. Jones' conclusion. Contrary to Grimes' contentions, the ALJ examined each item of evidence and accorded various quantums of weight to the same. Grimes' final contention is therefore meritless.

Inasmuch as the ALJ's decision is supported by substantial evidence, and Grimes did not present his "missing testimony" claim to the district court, the district court's decision is

AFFIRMED.

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

Civil Action No. 83-324-3-MAC

ENNIS GRIMES, S.S. # 255-56-1916,
Plaintiff,

vs.

OTIS R. BOWEN, Secretary of Health and Human Services,
Defendant.

[Filed March 3, 1986]

MEMORANDUM OPINION

The plaintiff, Ennis Grimes, brings this action pursuant to the provisions of Section 205(g) of the Social Security Act, 42 U.S.C. § 405(g), seeking judicial review of a final adverse decision by the Secretary of Health and Human Services. An application for disability insurance benefits under Section 223 of the Act, 42 U.S.C. § 423, was filed on May 4, 1982. The application was denied administratively and that position was sustained upon reconsideration by the Social Security Administration. On October 5, 1982, the plaintiff requested a hearing and on March 15, 1983, an administrative law judge found that plaintiff was not entitled to disability insurance benefits. This position was approved by the Appeals Council, thus becoming the final decision of the Secretary for purposes of appeal to the district court. The case is now properly before this court.

The scope of judicial review in disability cases is narrow and limited to determining whether the decision of the Secretary is supported by substantial evidence. *Richardson v. Perales*, 402 U.S. 389, 91 S.Ct. 1420, 28 L.Ed. 842 (1971); *Walden v. Schweiker*, 672 F.2d 835 (11th Cir. 1982). The court has reviewed the entire record and, after a careful consideration of the plaintiff's contentions, is of the opinion that the decision of the Secretary is supported by substantial evidence. Accordingly, the decision of the Secretary must be and the same hereby is affirmed.

An appropriate order in conformity with this opinion will be entered.

DATED this 3rd day of March, 1986.

/s/ [Illegible]
U.S. District Judge

APPENDIX D

DEPARTMENT OF HEALTH & HUMAN SERVICES
Social Security Administration

Refer to: SGC 255-56-1916

Office of Hearings and Appeals
PO Box 2518
Washington DC 20013

July 15, 1983

ACTION OF APPEALS COUNCIL ON
REQUEST FOR REVIEW

Mr. Ennis Grimes
812 Benjamin Street
Fort Valley, GA 31030

Dear Mr. Grimes:

The request for review of the hearing decision in your case has been considered.

Section 404.970 of Social Security Administration Regulations No. 4 (20 CFR 404.970) provides that the Appeals Council will grant a request for review of a hearing decision where: (1) there appears to be an abuse of discretion by the administrative law judge; (2) there is an error of law; (3) the administrative law judge's action, findings, or conclusions are not supported by substantial evidence, or (4) there is a broad policy or procedural issue which may affect the general public interest. This section also provides that where new and material evidence is submitted with the request for review, the entire record will be evaluated and review will be granted where the Appeals Council finds that the administrative law judge's action, findings, or conclusion is contrary to the weight of the evidence currently of record.

The Appeals Council has concluded that there is no basis under the above regulations for granting your request for review. Accordingly, your request is denied and the hearing decisions stands as the final decision of the Secretary in your case.

In reaching this conclusion, the Council considered the contentions made by your attorney in his brief submitted with the request for review and the additional medical records which included a February 2, 1983 X-ray, lumbosacral X-ray film, office visits of February 12, 1983 and March 11, 1983, at the Neurological Institute of Central Georgia and the February 16, 1983 medical statement by Charles K. Buafo, M.D. However, the Council concluded that this additional evidence does not provide a basis for changing the administrative law judge's decision.

If you desire a court review of the hearing decision, you may commence a civil action in the district court of the United States in the judicial district in which you reside within sixty (60) days from the date of receipt of this letter. It will be presumed that this letter is received within five (5) days after the date shown above unless a reasonable showing is otherwise made. See section 205 (g) of the Social Security Act, as amended (42 U.S.C. 405(g)) and section 422.210 of Social Security Administration Regulations No. 22 (20 CFR 422.210).

If a civil action is commenced, your complaint should name the Secretary of Health and Human Services as the defendant and should include the Social Security number(s) shown at the top of this notice.

Sincerely yours,

/s/ Thomas D. Jones
THOMAS D. JONES
Member, Appeals Council
(Acting)

cc:
Rudolph H. Patterson, Esq.
Macon, GA 31297-4199

APPENDIX E

DEPARTMENT OF
HEALTH AND HUMAN SERVICES
Social Security Administration
Office of Hearings and Appeals

DECISION

In the case of	Claim for
Ennis Grimes	Period of Disability and Disability Insurance Benefits
(Claimant)	
	255-56-1916
(Wage Earner) (Leave blank if same as above)	(Social Security Number)

This case is before the Administrative Law Judge upon a timely request for hearing. A hearing was held on November 23, 1982, in Macon, Georgia. Claimant was present and participated. He was represented by Rudolph N. Patterson, his attorney at law.

ISSUES

The general issues before the administrative law judge are whether the claimant is entitled to a period of disability and to disability insurance benefits under sections 216(i) and 223, respectively, of the Social Security Act. The specific issues are whether the claimant was under a "disability" as defined in the Act and, if so, when such "disability" commenced and the duration thereof; and whether the special earnings requirements of the Act are met for the purpose of entitlement.

LAWS AND REGULATIONS

Section 216(i) of the Social Security Act (42 U.S.C. 416(i)) provides for the establishment of a period of disability, and section 223 of the Act provides for the

payment of disability insurance benefits where the requirements specified therein are met.

Section 223(d)(1) of the Act defines disability as the "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. . . ."

Section 223(d)(2)(A) of the Act provides that an individual "shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy. . . ."

Section 223(d)(3) of the Act defines a "physical or mental impairment" as "an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques."

Section 404.1520(d) of Social Security Administration Regulations No. 4 (20 CFR 404.1520(d)) provides, in effect, that in cases where individuals with a severe impairment or impairments are not actually engaging in substantial gainful activity, they may be found disabled if their impairment or impairments meet the duration requirement and are either listed in Appendix 1 of Sub part B, Regulations No. 4, or are determined to be medically or equivalent of a listed impairment.

Regulation 404.1520(e) (20 CFR 404.1520(e)) provides, as pertinent herein, that where a decision cannot be made based on current work activity (404.1520(b)) or on medical facts alone (404.1520(c) and (d)), a review will be made of the individual's residual functional ca-

pacity and the physical and mental demands of work done in the past. If the individual can still do this kind of work, the individual will be found to be not disabled.

Regulation 404.1545(a) provides, as pertinent herein, that the individual's residual functional capacity includes an assessment of an individual's impairments which may affect the ability to function in a work setting. It may include descriptions and observations of limitations that go beyond the symptoms that are important in the diagnosis and treatment of the individual's medical condition.

Regulation 404.1545(b) provides, as pertinent herein, that assessment of physical abilities (e.g., strength) includes an assessment of the severity of the individual's impairments and a determination of residual functional capacity for work activity on a regular and continuing basis. The assessment also includes the evaluation of the individual's ability to perform physical activities such as walking, standing, lifting, carrying, pushing, pulling, reaching, handling, and the evaluation of other physical functions.

Regulation 404.1545(c) provides, as pertinent herein, that the assessment of mental impairments includes a consideration of factors such as the individual's ability to understand, to carry out and remember instructions, and to respond appropriately to supervision, co-workers, and work pressures in a work setting.

Regulation 404.1545(d) provides, as pertinent herein, that some medicaly determinable impairments, such as skin impairments, epilepsy and impairments of vision, hearing or other senses, postural and manipulative limitations, and environmental restrictions do not limit physical exertion, but will also be considered in addition to physical limitations in determining the individual's residual functional capacity.

Regulation 404.1561 provides, as pertinent herein, that where residual functional capacity is not sufficient to

enable an individual to do past relevant work, an assessment is made to determine what work if any, the individual can do, taking into consideration residual functional capacity, age, education, and work experience.

Regulation 404.1567 provides that for the purpose of determining exertional requirements of work in the national economy, jobs are classified as "sedentary," "light," "medium," "heavy," and "very heavy."

Regulation 404.1568 provides that for the purposes of assessing the skills reflected by an individual's work experience and of determining the existence of work in the national economy which the individual is competent to do, occupations are classified as "unskilled," "semi-skilled," and "skilled."

Regulation 404.1568(d) provides that individuals are considered to have transferable skills when the skilled or semi-skilled work functions which they have demonstrated in their past work can be applied to meet the requirements of skilled or semi-skilled work functions of other jobs or kinds of work. This regulation essentially states that transferability depends largely on the similarity of occupationally significant work functions among different jobs, but that complete similarity is not necessary to warrant the inference of transferability.

Regulation 404.1569 discussed Appendix 2 of Subpart P, Regulations No. 4, which sets forth rules reflecting the major functional and vocational patterns encountered in cases where individuals are not engaging in substantial gainful activity and are prevented by a severe medically determinable impairment from doing vocationally relevant past work. This regulation further provides, in effect, that when the findings of fact made as to all factors (age, education, work experience, residual functional capacity, and transferability of skills) coincide with the criteria of a rule, that rule will be used to decide whether the individual is disabled.

EVIDENCE AND OTHER MATTERS CONSIDERED

The Administrative Law Judge has carefully considered the testimony taken at the hearing, the documents described in the List of Exhibits attached hereto and specifically the medical reports of Dr. J.A. Spivey, Dr. W. B. Wildstein, Dr. James R. Jones, Dr Richard Typer, and Dr. Charles Buafo.

Consideration has also been given to all claims, assertions, and other proposed findings of claimant, as well as to the determinations heretofore made by the Social Security Administration. A new and independent decision is herein made, based on a thorough evaluation of all evidence and all applicable Social Security laws.

EVALUATION OF THE EVIDENCE

In order to be found disabled within the meaning of the Social Security Act, as amended, an individual must have a physical or mental impairment which can be expected to result in death or has prevented or can be expected to prevent the individual from engaging in substantial gainful activity for a period of at least 12 continuous months. Allegations of inability to work due to physical or mental impairments must be substantiated by clinical or laboratory findings documenting physiological or psychological abnormalities. Statements of the applicant, including claimant's own description of impairments, are alone insufficient to establish the presence of a physical or mental impairment.

Section 223(d)(2)(A) of the Social Security Act, as amended, provides that: "An individual . . . shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy regard-

less of whether such work exists in the immediate area in which he lives or whether a specific job vacancy exists for him or whether he would be hired if he applied for work."

The medical evidence shows that the claimant's conditions are not attended by clinical findings that meet or equal in severity the requirements of Appendix No. 1, Subpart P, of Regulations No. 4. Moreover, the claimant is not currently engaging in substantial gainful activity. Claimant met the special earnings requirements of Title II of the Social Security Act, as amended, on the date he alleged he became unable to work and continues to meet them through the date of this decision. Consequently, the issue before the Administrative Law Judge is whether claimant's impairments prevent him from performing his usual work and if so, whether those impairments prevent him from performing other types of substantial gainful activity.

Claimant alleges disability due to moderately advanced degenerative disc disease at L5-S1. The medical evidence reveals that x-rays taken at Peach County Hospital on January 27, 1982, of claimant's lumbar spine revealed considerable narrowing of L5-S1 intervertebral disc space, with sclerosis of the end plates both at L5 and S1. There was some hypertrophy spurring present anterior with some degenerative changes at the lateral posterior apophyseal joints. The other vertebrae and disc spaces were all well preserved. Claimant was examined by orthopedic specialist on April 26, 1982, at which time physical examination revealed minimum tightness in the paraspinous muscles with forward flexion of 70 degrees, lateral bending of 25 degrees, and extension of 20 degrees. Claimant could stand on his toes and heels reasonably well. He had a negative Trendelenburg and could deep knee bend satisfactorily. Reflexes at the knees and ankles were equal and active and extension of the knees in the sitting position was carried out without difficulty. Dorsiflexes of the

feet and toes were strong and range of motion in the hips, knees, and ankles was within normal limits. Straight leg raising test to 60 degrees on the left caused some discomfort and to 75 degrees on the right. Abduction and extension of the hips were carried out without difficulty. Diagnosis was that of probable chronic lumbosacral strain. (Exhibit 11). Dr. W. B. Wildstein of Georgia Occupational Medicine examined claimant on May 27, 1982, and at the same time reviewed his previous records. Dr. Wildstein was of the opinion that claimant clinically has a lumbosacral ruptured disc and that with this problem he was unable to do any prolonged sitting, standing, or lifting above 25 pounds. It was felt that claimant would be a candidate for long term disability. (Exhibit 13) On June 1, 1982, claimant was evaluated by a neurosurgeon whose opinion was that clinically claimant exhibited a classical and straightforward lumbosacral disc rupture on the left. He suggested that a myelogram be performed to determine what treatment was required. (Exhibit 12) On July 15, 1982, claimant was examined by an orthopedic surgeon in Atlanta, Georgia, whose x-rays revealed no evidence of any fracture or dislocation. There was, however, a decrease in the disc space at L5-S1. Diagnosis of that was chronic low back pain syndrome with left sciatica. He was also of the opinion that claimant should have a myelogram and he was further of the opinion that claimant had a five percent whole body permanent physical impairment and loss of physical functioning of the whole body. (Exhibit 15) Claimant was hospitalized October 18-21, 1982, at which time he was found to have moderate swelling of the olecranon process of the left elbow with slight tenderness and diagnosis was that of arthritis of the lumbar spine; degenerative disc of LS-S1 by previous history; and arthritis of the left elbow. The medical evidence does not reveal that claimant has ever undergone a myelogram or a CAT scan of his back. Although claimant does experience some pain and discomfort in his low

back, none of the evidence shows that claimant's musculoskeletal condition has resulted in advanced joint space narrowing or significant loss of motion. The Administrative Law Judge therefore concludes that claimant's condition is not of sufficient severity to produce disability.

Claimant alleges that he is also disabled due to heart condition. The medical evidence reveals that claimant was hospitalized October 18-21, 1982, at the Peach County Hospital at which time EKG reevaled left ventricular hypertrophy, lateral ischemia, and multiple PVC's. Because of these chronic findings, the claimant was transferred to the intensive care unit and EKG on October 19, 1982, was reported as normal. On October 20, 1982, EKG revealed right ventricular hypertrophy consistent with pulmonary disease and sinus bradycardia. Claimant's cardiac enzymes were as follows: SGOT 14, LDH 66, and CPK 34. Claimant was transferred to the Middle Georgia Hospital for cardiac evaluation. Diagnosis was cardiac disease of undetermined etiology and cardiac arrhythmia. (Exhibit 17) Claimant was hospitalized October 21-26, 1982, at the Middle Georgia Hospital at which time serial EKG's were all normal sinus rhythym with no acute changes. Rhythym strips on one of the EKG's showed multifocal PVC's but there were no couplets or triplets noted. Chest x-ray was within normal limits. A stress test was done; however, claimant did not develop any chest pain or any rhythym disturbances; the test was therefore normal maximum stress test. Discharge diagnosis was that of multifocal premature ventricular contractions with a history of back pains. Dr. Charles K. Buafo stated on December 13, 1982, that claimant's hospitalization at the Middle Georgia Hospital was uncomplicated.

He had non-evasive cardiac evaluations which consisted of monitoring while in the intensive care unit, stress-testing to assess any ventricular ectopy, and also an initial screening for ischemic heart disease, two-dimen-

tional echocardiograms to assess ventricular function. His stress test report showed he had normal stress test with no documentation of ventricular ectopy. A two-dimentional echocardiogram was also normal. A 24-hour Holter Monitor done while in the hospital showed ventricular ectopy that was PVC's and also bigeminys. The laboratory findings to document any evidence of myocardia infarction were also negative and all cholesterol levels were within normal limits. Claimant's chest x-ray and blood work were all within normal limits and he was discharged on Quinidine 300 mg by mouth four times a day for treatment of the ventricular ectopy. Dr. Buafo stated that he had last seen claimant on November 22, 1982, and he supposed that claimant was getting along very well as far as his ventricular ectopy was concerned. (Exhibit 20) None of the evidence shows that claimant has suffered from any cardiovascular complications such as angina pectoris, congestive heart failure, or stroke. The Administrative Law Judge therefore concludes that claimant's condition is not of sufficient severity to produce disability.

Claimant testified at the hearing that he suffers from pain, and he indicated that such pain is a major cause of his inability to work. He further testified that he drove to the hearing. Claimant stated that he can walk a short distance, can stand 15 minutes, and has problems bending, stooping, or squatting. Claimant is able to care for his own personal needs. The record does not show that claimant takes pain medication of such strength that he cannot be expected to maintain adequate concentration for substantial gainful activity. The clinical findings do not support claimant's allegations of severe pain. While pain, in itself, can be of sufficient severity to produce disability, the Administrative Law Judge concludes that claimant's allegation of pain so severe that he cannot engage in any substantial gainful activity is not credible; therefore, claimant's pain is not of sufficient severity to produce disability

There is no further evidence to indicate that claimant is suffering from any other severe impairment.

In reaching a decision as to whether claimant is under a "disability" as defined by the Social Security Act, as amended, the Administrative Law Judge is fully aware of the opinion of Dr. James R. Jones as that opinion was expressed in a report dated July 16, 1982 (Exhibit 14). In that report Dr. Jones stated that claimant was totally disabled to work because of chronic lumbosacral strain and arthritis. Although Dr. Jones is of the opinion that cliamant cannot perform any type of substantial gainful activity, the clinical findings of Dr. Jones do not support a finding of "disability" as defined by the Social Security Act, and the other evidence of record does not support such a conclusion either. In considering the weight to be given to Dr. Jones' opinion, the Administrative Law Judge is guided by the provisions of Regulation 404.1527 of the Social Security Regulations No. 4 which provides that the function of deciding whether or not an individual is under a disability is the responsibility of the Secretary; and a statement by a physician that an individual is disabled is a conclusion upon the ultimate issue to be decided by the Secretary and is not determinative of the question of whether "disability" actually exists. The weight to be given to such a statement depends on the extent to which it is supported by clinical findings and is consistent with other evidence of record.

The record establishes that claimant was born on April 6, 1936, received a 12th grade education, and has worked within the last 15 years as a carpenter and building maintenance superintendent. He has hand and eye coordination and can read and write. Based upon a thorough consideration of all evidence, the Administrative Law Judge concludes that claimant is not suffering from an impairment, or a combination of impairments, of sufficient severity to prevent him from engaging in any sub-

stantial gainful activity for a period of at least 12 continuous months. He retains the functional capacity to perform sedentary type work.

FINDINGS

After careful consideration of the entire record, the administrative law judge makes the following findings:

1. Claimant met the special earnings requirements of the Act on April 23, 1982, the date that the claimant stated he became unable to work, and continues to meet them at least through the date of this decision.

2. Claimant has the following impairments: (1) moderately advance degenerative disc disease at L5-S1 without evidence of significant loss of motion, (2) ventricular ectopy without evidence of congestive heart failure or stroke.

3. Claimant's allegations of pain are credible to preclude heavy, medium, and light work activity, but are not credible to preclude sedentary work activity.

4. Claimant has the residual functional capacity to perform work-related functions except for work involving prolonged standing and heavy lifting.

5. Claimant is unable to perform his past relevant work as a carpenter.

6. Claimant has the residual functional capacity for at least sedentary work as defined in Regulation 404.1567.

7. Claimant is 46 years old, which is defined as younger individual.

8. Claimant has a 12th grade education.

9. In view of the claimant's age and residual functional capacity, the issue of transferability of work skills is not material.

10. Regulation 404.1569 and Rule 202.21, Table No. 1, Appendix 2, Subpart P, Regulation No. 4, direct a conclusion that the claimant, considering his residual functional capacity, age, education, and work experience, is not disabled.

11. Claimant was not under a "disability," as defined in the Social Security Act, at any time through the date of this decision.

DECISION

It is the decision of the Administrative Law Judge that, based on the application filed on June 4, 1982, the claimant is not entitled to a period of disability or disability insurance benefits under Sections 216(i) and 223, respectively, of the Social Security Act, as amended.

/s/ Robert L. Smith
ROBERT L. SMITH
Administrative Law Judge
152 New Street
Macon, Georgia 31201

Date: March 15, 1983